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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 838

DANIEL SORANNO,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. .....

DANIEL SORANNO,
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vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the United States District Court for the Eastern District of California, convicting the petitioner of a violation of the Universal Military Training and Service Act and sentencing him to the custody of the Attorney General.

1. OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals is not yet reported. It is in the Record, pages ..... It is also set forth as Appendix A to this petition.

2. STATUTORY PROVISION SUSTAINING JURISDICTION

The final judgment of the Court of Appeals was entered on October 15, 1968 (denial of petition for rehearing) [R. ...]*; also see Appendix B to this petition. This petition for Writ of Certiorari is filed within the required thirty days' time.

The jurisdiction of this Court rests on Section 1254 (1) of the Judicial Code, 28 U.S.C. The District Court had jurisdiction under 18 U.S.C. § 3231.

3. QUESTIONS PRESENTED

The sole questions presented are:

1. Whether a Selective Service System registrant, presenting a prima facie claim for a conscientious objector classification, and was so classified, but, was thereafter reclassified I-A (the only intervening fact being that he appealed for a student classification) is entitled to defend a prosecution for failure to submit to induction on the basis that he was misclassified contrary to all the evidence before the board, where he did not report for induction, as ordered.

2. Whether his excuse for failing to go to the Entrance Station, for induction, is legally sufficient.

*R. refers to the Record of Proceedings in the Court of Appeals.

4. STATUTES AND REGULATIONS INVOLVED

Involved are the First Amendment and § 456 (j), of the Universal Military Training and Service Act of 1951, as amended (50 U.S.C.A. App.). They are set forth in Appendix C.

5. STATEMENT OF THE CASE

The indictment charged petitioner with a violation of the Universal Military Training Service Act, 50 U.S.C. App. § 462 [TR. 2]*; that he became a registrant of Local Board No. 55 of the Selective Service System, State of California and that having theretofore been duly classified in Class I-A, did knowingly refuse and fail to comply with the order of his said Local Board No. 55 to report for and submit to induction into the armed services of the United States [TR. 1].

Petitioner pleaded not guilty, waived jury trial and was tried on October 30, 1967 [TR. 6]. A written motion for judgment of acquittal was filed [TR. 3]. The motion was denied and the petitioner was found guilty on October 30, 1967, and thereafter was sentenced and admitted to bail pending appeal [TR. 6].

6. THE FACTS

Petitioner registered with Local Board No. 55 on May 19, 1960.

While classified as a student he filed the Special Form for Conscientious Objector on September 30, 1964 [EX. 12]** but was continued in a student classification, this

*TR. refers to the Transcript of Record (trial level).

**EX. refers to the Government's Exhibit, the selective service file of appellant. The pagination is ordinarily pencilled at the bottom of each sheet of the exhibit.

action conforming to applicable law, the student classification being "lower" than either of the two conscientious objector classifications.

After he was reclassified into Class I-A (September 15, 1965) [EX. 12] he was reclassified into Class I-O (October 15, 1965) [EX. 12].

He then wrote he wanted to finish his schooling and sent in an appeal for a student's classification. He was promptly reclassified into Class I-A [EX. 12].

He appealed but was kept in Class I-A by the Appeal Board [EX. 13, 63].

Shortly thereafter he was ordered to report for induction. He failed to report, twice, giving the same excuse each time: that his nose had been operated on; that the first operation was faulty and required a reoperation; that at the times of his orders to report for induction (1) his nose was in an extremely vulnerable condition to a blow; (2) that he feared being struck on the nose; (3) that he had reasons to fear being struck on the nose in that it was common knowledge that, at all times concerned, the Oakland Induction Station was subject to violence by protestors, police and selectees [EX. 30, 40, 41, 57 and R.T. 43, 95].

7. REASONS FOR GRANTING WRIT

The sole questions raised by the petitioner call for a definitive answer to the oft-raised questions:

1. Is a Selective Service System registrant entitled to a defense in court, on a claim of an arbitrary ignoring of an unrebutted prima facie case for a conscientious objector classification, despite the fact he did not report at the induction station?

2. Are there excuses, and is petitioner's a good one for non-appearance at the induction station?

The questions are of national import because thousands of registrants are in the predicament of petitioner: they are young and inexperienced, and are given wholly insufficient warning or information on the subject of how to help themselves get ready for a court contest.

ARGUMENT

I

The Court of Appeals' opinion says (page one): "Appellant also raises the question of whether he should not have been classified as a conscientious objector. This he cannot raise on this appeal, for he had himself objected to his I-O (or conscientious objector classification) before his I-A classification."

The factual basis for the above conclusion is, in reality, a misreading of defendant's Selective Service file. A correct reading shows the following:

1. He filed his conscientious objector claim and he *was* given a I-O [EX. 12].

2. Since he was desirous of finishing his education he quickly said so in a letter and asked for II-S; he also "appealed" [EX. 63].

3. The board, at this point, did not honor his appeal. The board's prompt reaction, giving him a I-A, was an outrageous act. There was not only no factual basis for a change, but when it *then* sent his file to the Appeal Board his appeal was unfairly prejudiced: it was in a less favorable odor in that he was before the Appeal Board as a rejected claimant for a conscientious objector classifica-

tion, a registrant impliedly branded a sham; he should have been before them as a I-O, a registrant impliedly found truthful, conscientious objection being a subjective matter.

The law is clear that registrants are required to promptly notify the board of a change of status, 32 C.F.R. § 1623.1; the law is clear that the system is to classify every registrant in the "lowest" class which his valid evidence presents, 32 C.F.R. § 1623.2.

Therefore, it was his duty to report that he was back in college and it was the board's duty to reclassify him from I-O to II-S.

So much for the merits of his case.

II

Next, the validity of his excuse.

The opinion [page two] says, "Nor is appellant's fear he would be 'socked' in the nose a sufficient excuse for him to fail to go 'to the brink' of induction."

This conclusion (a repetition of the similar comment on page one) overlooks 1) the clear, and undisputed facts relating to the precise condition of the nose: that it was in a fragile condition, and that he was in the middle of a series of required operations, and 2) that there was an unruly atmosphere at the Oakland Examining and Induction Station, some conduct there being of a violent nature, at all times concerned.

It is submitted that such an excuse is legally sufficient; that neither the exigencies of the times nor administrative convenience forbad the reordering of this man at a later time.

Donato v. *United States,* 9 Cir., 1962, 302 F.2d 468.

CONCLUSION

For the reasons given certiorari should be granted and the judgment should be reversed.

Respectfully,

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Los Angeles, California 90012
Attorney for Petitioner

December 14, 1968.

APPENDIX

APPENDIX A

TRANSCRIPT OF RECORD

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

TWO VOLUMES

No. .....

DANIEL SORANNO,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

VOLUME ONE

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Proceedings had in Court of Appeals
in this volume

United States Court of Appeals

FOR THE NINTH CIIRCUIT

DANIEL SORANNO,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

No. 22587

Appeal from the United States District Court
for the Eastern District of California

Proceedings Had in the United States Court of Appeals for the Ninth Circuit

United States Court of Appeals

FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Monday, August 5, 1968

Before: JOHNSEN, BARNES and DUNIWAY, Circuit Judges

Order of Submission

This cause coming on for hearing, J. B. Tietz argued for the appellant, and James J. Simonelli argued for the appellee, thereupon the Court ordered the cause submitted for consideration and decision.

United States Court of Appeals

FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Monday, September 16, 1968

Before: JOHNSEN, BARNES and DUNIWAY, Circuit Judges

Order Directing Filing of Opinion and Filing and Recording of Judgment

ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk and that a judgment to be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

United States Court of Appeals

FOR THE NINTH CIRCUIT

DANIEL SORANNO,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

No. 22,587

[September 16, 1968]

Appeal from the United States District Court for the Eastern District of California

Before: *JOHNSEN, BARNES and DUNIWAY, Circuit Judges

PER CURIAM:

Appellant was indicted and found guilty of failing to report for induction into the military service of the United

*Hon. Harvey M. Johnsen, Senior Judge, U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

States (50 U.S.C. Appendix § 462) after he had been classified I-A; had appealed; his appeal had been denied; and he had been ordered to report. The reason given for his failure to report was that his nose had been operated upon, and he feared he would be "socked" on the nose at the induction center.

Jurisdiction below existed under 18 U.S.C. § 3231, and exists here under former Rule 37(a)(1) and (2), Fed. R. Crim. P.

Appellant also raises the question of whether he should not have been classified as a conscientious objector. This he cannot raise on this appeal, for he had himself objected to his I-O (or conscientious objector classification) before his I-A classification. He failed to go to the brink of induction—or even so far as to report for a physical examination; or to report on a second request after a first refusal to report. The propriety of the classification is thus not open to appellant's attack. "[T]he classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction . . . unless the local board first specifically finds that there has been a change in registrant's status resulting from circumstances over which the registrant had no control." 32 C.F.R. § 1625.2, Selective Service Regulations. *Falbo* v. *United States*, 320 U.S. 549 (1944); *Moore* v. *United States*, 302 F.2d 929, 930 (9th Cir. 1962). *Cf. Billings* v. *Truesdell*, 321 U.S. 542 (1944); *Estep* v. *United States*, 327 U.S. 114 (1946); *Daniels* v. *United States*, 372 F.2d 407, 413.

Nor is appellant's fear he would be "socked" in the nose a sufficient excuse for him to fail to go "to the brink" of induction. *Compare Donato* v. *United States*, 302 F.2d 468 (9th Cir. 1962) with *Prohoroff* v. *Evans*, 259 F.2d 694 (9th Cir. 1958) and *Evans* v. *United States*, 252 F.2d 509 (9th Cir. 1958).

AFFIRMED.

Judgment

United States Court of Appeals

FOR THE NINTH CIRCUIT

DANIEL SORANNO,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

No. 22587

Appeal from the United States District Court
for the Eastern District of California

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the ..... judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered September 16, 1968.

APPENDIX B

United States Court of Appeals

FOR THE NINTH CIRCUIIT

Excerpt from Proceedings of Tuesday, October 15, 1968

Before: JOHNSEN, BARNES and DUNIWAY, Circuit Judges

Order Denying Petition for Rehearing

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of Appellant filed October 15, 1968 and within time allowed therefor, and valid extension thereof, by rule of court, for a rehearing of above cause be, and hereby is denied.

United States Court of Appeals

FOR THE NINTH CIRCUIT

DANIEL SORANNO,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

No. 22587

Certificate of Clerk, United States Court of Appeals for the Ninth Circuit, to Record Certified under Rule 21 of the Revised Rules of the Supreme Court of the United States.

I, WILLIAM B. LUCK, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify this transcript of record in two volumes to be a full, true and correct copy of the entire record of the above entitled cause in the said Court of Appeals, made pursuant to the request of counsel for the appellant Soranno, and certified under Rule 21 of the Revised Rules of the Supreme Court of the United States.

ATTEST my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 5th day of November, 1968.

WILLIAM B. LUCK, Clerk

APPENDIX C

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Universal Military Training and Service Act of 1951, As Amended (50 U.S.C.A. App. § 456 (j)).

(j) Conscientious objectors.—Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of relgious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period—equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person

who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The

appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.